

REMARKS

The Office Action mailed April 6, 2005 and references cited therein have been reviewed. Applicant has amended claims 28, 29, 51, 57, 58, and added new claims 74-84.

The Examiner objected to claims 28-42 under 35 U.S.C. §112(2) as being indefinite. Applicant has amended claim 28 to clarify that the non-circular anti-rotation flange includes a plurality of substantially straight surfaces that total an odd number. Applicant submits that claims 28-42 are in proper form pursuant to 35 U.S.C. §112.

THE SECTION 102 REJECTIONS

Claims 28, 32, 34 and 42 were rejected under 35 U.S.C. §102(b) as being anticipated by JP 61-930093. Claims 28, 32, 34, 40 and 42 were rejected under 35 U.S.C. §102(b) as being anticipated by Thompson.

A claim is not anticipated, 35 U.S.C. §102, unless each element and limitation of the claim was known or used by others before it was invented by the patentee. *Hoover Group v. Custom Metalcraft*, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995). (Emphasis added). In other words, invalidity by anticipation requires that the four corners of a single, prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. *Atlas Powder Co. v. Ireco Inc.*, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); *In re Paulsen*, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Claim 28 includes the limitations that the molded plastic container 1) include a non-circular anti-rotation flange that at least partially inhibits full rotation of the container as a cap is inserted on the container, 2) the non-circular anti-rotation flange including an outer peripheral edge that is at least partially formed of a plurality of substantially straight surfaces totaling an odd number, and 3) the straight surfaces are symmetrically oriented about the non-circular anti-rotation flange.

A. The '093 Japanese Patent

The '093 Japanese patent discloses several types of bottle flanges in Figures 2, 3 and 5. None of these bottle flanges satisfy all the limitations in claim 28.

The '093 Japanese patent discloses in Figure 2 a portion of a bottle flange that includes a plurality of curvilinear structures on one section of the outer peripheral edge of the flange. The outer peripheral edge of the flange does not include any substantially straight surfaces. The outer peripheral edge of the flange does not include an odd number of substantially straight surfaces. The curvilinear structures are also not symmetrically oriented about the flange.

The '093 Japanese patent discloses in Figure 3 a portion of a bottle flange that includes a plurality of rib support structures positioned on a portion of the upper and lower sides of the flange. These structures are not positioned on or extend to the outer peripheral edge of the flange as shown in Figure 3-B. The flange is a circular flange as shown in Figure 3-B. As such, the outer peripheral edge of the flange does not include any substantially straight surfaces. The outer peripheral edge of the flange does not include an odd number of substantially straight surfaces. The rib support structures are also not symmetrically oriented about the flange.

The '093 Japanese patent discloses in Figure 5 a bottle flange that includes a plurality of curvilinear structures on the outer peripheral edge of the flange. The outer peripheral edge of the flange does not include any substantially straight surfaces. In addition, the outer peripheral edge of the flange does not include an odd number of substantially straight surfaces.

For at least the reasons set forth above, none of the bottle flanges disclosed in the '093 Japanese patent include all of the limitations of claim 28. As such, claim 28 and all the claims dependent therefrom are not anticipated by the '093 Japanese patent.

B. Thompson '246

The Thompson '246 patent discloses several types of bottle flanges in Figures 6-13. None of these bottle flanges satisfy all the limitations in claim 28.

Thompson '246 discloses in Figure 6 a bottle flange 16 that includes a single notch 18. The outer peripheral edge of the flange does not include an odd number of substantially straight surfaces. The notch is not symmetrically oriented about the flange since only one notch exists.

Thompson '246 discloses in Figure 8 a bottle flange 16 that includes three structures 43A-C on a top surface of the flange. These structures are not positioned on or extend to the outer peripheral edge of the flange as shown in Figure 8C. The flange is a circular flange as shown in Figure 8C. As such, the outer peripheral edge of the flange does not include any substantially straight surfaces. The outer peripheral edge of the flange does not include an odd number of substantially straight surfaces. The structures are also not symmetrically oriented about the flange as shown in Figure 8C.

Thompson '246 discloses in Figures 9-11 a bottle flange 16 that includes other arrangements for structures 43. However, these structures are not positioned on or extend to the outer peripheral edge of the flange. All of these flanges are circular. The outer peripheral edge of these flanges do not include any substantially straight surfaces. The outer peripheral edge of these flanges also do not include an odd number of substantially straight surfaces. The structures 43 are also not symmetrically oriented about these flanges.

Thompson '246 discloses in Figure 12 a bottle flange 16 that includes an even number of lugs 47. As shown in Figure 12C, the lugs are not positioned on or extend to the outer peripheral edge of the flange. The outer peripheral edge of the flange also does not include an odd number of these lugs.

Thompson '246 discloses in Figure 13 a bottle flange 16 that includes another arrangement for structures 43. These structures are not positioned below the flange as shown in Figure 13A. As such, these structures are not on or extend to the outer peripheral edge of the flange. The flange is circular as shown in Figure 13C. The outer peripheral edge of the flange does not include any substantially straight surfaces. The outer peripheral edge of the flange also does not include an odd number of substantially straight surfaces.

For at least the reasons set forth above, none of the bottle flanges disclosed in Thompson '246 include all of the limitations of claim 28. As such, claim 28 and all the claims dependent therefrom are not anticipated by Thompson '246.

THE SECTION 103 REJECTIONS

A. The '093 Japanese Patent and Collette '404 or the Admitted Prior Art (APA)

Claims 38 and 40 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '093 Japanese patent in view of Collette '404 or the admitted prior art (APA). The Examiner asserted that the '093 Japanese patent meets all the limitations of 28 except for the champagne bottom. As set forth above, the '093 Japanese patent does not meet all the limitations of 28, thus the combined teachings of the '093 Japanese patent and Collette '404 and/or the APA do not make obvious any of the pending claims.

B. Thompson '246 and Collette '404 or the APA

Claim 38 was rejected under 35 U.S.C. §103(a) as being unpatentable over Thompson '246 in view of Collette '404 or the APA. The Examiner asserted that Thompson '246 meets all the limitations of 28 except for the champagne bottom. As set forth above, Thompson '246 does not meet all the limitations of 28, thus the combined teachings of Thompson '246 and Collette '404 and/or the APA do not make obvious any of the pending claims.

C. Collette '404 and Pree '942 or the '432 Japanese Patent or Akiyama '284

Claims 28-42 and 51-56 were rejected under 35 U.S.C. §103(a) as being unpatentable over Collette '404 in view of Pree '942 or the '432 Japanese patent or Akiyama '284.

1. Collette '404 and Pree '942

The Examiner admitted that Collette does not teach a flange with straight edges. The Examiner cited Pree '942 as disclosing a flange having a plurality of straight edges. All of the pending claims require the flange to include an odd number of straight edges. Pree '942 only discloses a flange having ten straight edges. The ten sided flange disclosed in Pree '942 does not teach a flange having an **odd** number of straight surfaces. It is noted that the Examiner in a subsequent rejection of the claims indicated that it would have been obvious to one of ordinary skill in the art to provide a flange with an "odd" number of straight sides. Applicant disagrees. All of the numerous prior art cited by Applicant and the Examiner has revealed that no one in the industry has been motivated to form a bottle having a flange with an odd number of straight edges that are symmetrically oriented on the outer peripheral edge of the bottle flange. The prior art of record reveals an industry standard that is contrary to the Examiner's conclusion.

Pree '942 also discloses a body shape that is substantially different from the body of the plastic bottle defined in the claims. Pree '942 also does not disclose a thread on the neck of the decanter. The Examiner has provided no motivation that one skilled in the art would look to a decanter design to solve a problem associated with a plastic bottle having a completely different configuration. Applicant is also not aware of a plastic bottle being used as a decanter. For at least these reasons, none of the pending claims are obvious in view of Collette '404 and Pree '942.

2. Collette '404 and The '432 Japanese Patent

As stated above, the Examiner admitted that Collette does not teach a flange with straight edges. The Examiner cited the '432 Japanese patent as disclosing a flange having a plurality of straight edges. The '432 Japanese patent only discloses a flange having six straight edges. The six sided flange disclosed in the '432 Japanese patent does not teach a flange having an **odd** number of straight surfaces. It is noted that the Examiner in a subsequent rejection of the claims indicated that it would have been obvious to one of ordinary skill in the art to provide a flange with an "odd" number of straight sides. Applicant disagrees. All of the numerous prior art cited by Applicant and the Examiner has revealed that no one in the industry has been motivated to form a bottle having a flange with an odd number of straight edges that are symmetrically oriented on the outer peripheral edge of the bottle flange. The prior art of record reveals an industry standard that is contrary to the Examiner's conclusion.

The '432 Japanese patent also discloses a bottle body shape that is substantially different from the body of the plastic bottle defined in the claims. The Examiner has provided no motivation that one skilled in the art would look to the bottle disclosed in the '432 Japanese patent to solve a problem associated with a plastic bottle having a completely different configuration. For at least these reasons, none of the pending claims are obvious in view of Collette '404 and the '432 Japanese patent.

3. Collette '404 and Akiyama '284

As stated above, the Examiner admitted that Collette '404 does not teach a flange with straight edges. The Examiner cited Akiyama '284 as disclosing a flange having a plurality of straight edges. Akiyama '284 makes a brief reference to the bottle flange 6 and discloses that the ring 6 is partly or entirely formed of knurls 9 as shown in Figure 1. (Col. 4, lns. 26-30). The knurls

are disclosed for use in opening the bottle. (Col. 2, lns. 38-42). Figure 33 discloses a flange having a hexagon or octagon shape. No further disclosure regarding the ring is set forth. The six or eight sided flange disclosed in Akiyama '284 does not teach a flange having an **odd** number of straight surfaces. It is noted that the Examiner in a subsequent rejection of the claims indicated that it would have been obvious to one of ordinary skill in the art to provide a flange with an "odd" number of straight sides. Applicant disagrees. All of the numerous prior art cited by Applicant and the Examiner has revealed that no one in the industry has been motivated to form a bottle having a flange with an odd number of straight edges that are symmetrically oriented on the outer peripheral edge of the bottle flange. The prior art of record reveals an industry standard that is contrary to the Examiner's conclusion. For at least these reasons, none of the pending claims are obvious in view of Collette '404 and Akiyama '284.

D. The '093 Japanese Patent and Pree '942 or the '432 Japanese Patent

Claims 28-37, 42, 51-60 and 65 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '093 Japanese Patent in view of Pree '942 or the '432 Japanese Patent.

1. The '093 Japanese Patent and Pree '942

The Examiner admitted that the '093 Japanese Patent does not teach a flange with straight edges. The Examiner cited Pree '942 as disclosing a flange having a plurality of straight edges. All of the pending claims require the flange to include an odd number of straight edges. Pree '942 only discloses a flange having ten straight edges. The ten sided flange disclosed in Pree '942 does not teach a flange having an **odd** number of straight surfaces. Pree '942 also discloses a body shape that is substantially different from the body of the plastic bottle defined in the claims. Pree '942 also does not disclose a thread on the neck of the decanter. The Examiner has provided no motivation that one skilled in the art would look to a decanter design to solve a problem associated with a plastic

bottle having a completely different configuration. Applicant is also not aware of a plastic bottle being used as a decanter. For at least these reasons, none of the pending claims are obvious in view of the '093 Japanese Patent and Pree '942.

2. The '093 Japanese Patent and The '432 Japanese Patent

As stated above, the Examiner admitted that the '093 Japanese Patent does not teach a flange with straight edges. The Examiner cited the '432 Japanese patent as disclosing a flange having a plurality of straight edges. The '432 Japanese patent only discloses a flange having six straight edges. The six sided flange disclosed in the '432 Japanese patent does not teach a flange having an **odd** number of straight surfaces. The '432 Japanese patent also discloses a bottle body shape that is substantially different from the body of the plastic bottle defined in the claims. The Examiner has provided no motivation that one skilled in the art would look to the bottle disclosed in the '432 Japanese patent to solve a problem associated with a plastic bottle having a completely different configuration. For at least these reasons, none of the pending claims are obvious in view of the '093 Japanese Patent and the '432 Japanese patent.

E. The '093 Japanese Patent and Collette '404

Claims 38-41 and 61-64 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '093 Japanese patent in view of Collette '404.

As indicated above, the Examiner admitted that the '093 Japanese patent does not teach a flange with straight edges. All the pending claims require that the bottle flange include an odd number of straight edges. The Examiner has also admitted that Collette does not teach a flange with straight edges. For at least these reasons, none of the pending claims are obvious in view of the '093 Japanese patent in view of Collette '404.

Applicants submit the claims presently pending in the above-identified patent application are in condition for allowance and a notice to that effect is earnestly solicited.

Respectfully submitted,
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